

# COASTAL CONSERVANCY

Staff Recommendation

January 19, 2012

## FRESHWATER FARMS PHASE II ACQUISITION

Project No.04-095-02

Project Manager: Michael Bowen

**RECOMMENDED ACTION:** Authorization to disburse up to \$223,600 to the Northcoast Regional Land Trust to acquire the 20-acre Freshwater Farms Nursery, Humboldt County for the purposes of protecting and restoring habitat and agricultural lands, and providing public access.

**LOCATION:** Humboldt Bay Area, unincorporated Humboldt County

**PROGRAM CATEGORY:** Resource Enhancement

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### EXHIBITS

Exhibit 1: [Project Location and Site Map](#)

Exhibit 2: [Project Letters](#)

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### RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections §31251- 31270 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of up to two hundred and twenty-three thousand six hundred dollars (\$223,600.00) to the Northcoast Regional Land Trust (“NRLT”) for the acquisition of the approximately 20-acre Freshwater Farms Nursery property (Humboldt County Assessor’s Parcel Number 402-241-009), as shown on Exhibit 1 to the accompanying staff recommendation, for the purposes of protecting and restoring habitat and agricultural land and expanding public access opportunities, subject to the following conditions:

1. Prior to the disbursement of any Conservancy funds for acquisition, NRLT shall submit for review and approval by the Executive Officer:
  - a. All relevant acquisition documents, including, but not limited to, the appraisal, agreement(s) of purchase and sale, escrow instructions and documents of title.
  - b. Evidence that sufficient funds are available to complete the acquisition.
2. NRLT shall permanently dedicate the property for agricultural and open space preservation, habitat conservation and wetlands enhancement, and public access, in a manner acceptable to the Executive Officer, in accordance with Public Resources Code Section 31116(b).

3. NRLT shall pay no more than fair market value for the property, as established in an appraisal approved by the Executive Officer.
4. Conservancy funding shall be acknowledged by erecting and maintaining a sign on the property that has been reviewed and approved by the Executive Officer.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with the current Project Selection Criteria and Guidelines.
  2. The proposed project is consistent with the purposes and objectives of Chapter 6 of Division 21 of the Public Resources Code (Sections 31251-31270) regarding the enhancement of coastal resources.
  3. NRLT is a non-profit organization existing under Section 501(c)(3) of the Internal Revenue Service Code whose purposes are consistent with Division 21 of the Public Resources Code.”
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### **PROJECT SUMMARY:**

The proposed authorization of \$223,360 would enable the Northcoast Regional Land Trust (“NRLT”), a nonprofit organization, to acquire the 20-acre Freshwater Farms Nursery property in Humboldt County. NRLT’s goals for purchasing this property are several-fold: 1) to expand public access to and recreational opportunities at its adjacent 54-acre reserve; 2) to preserve the agricultural quality of this coastal property and thereby protect working farms in Humboldt County; and 3) to provide for the opportunity to extend and expand an earlier Coastal Conservancy and Department of Fish and Game-sponsored, estuarine wetlands restoration project on the previously acquired property, thereby improving the water quality and habitat value of tributaries to Humboldt Bay. Through this acquisition, NRLT will obtain ownership and use of the only practical parking area, and available structures, thereby enabling it to secure and improve public access in the area.

NRLT intends to maintain the land as a working farm while expanding upon its estuarine wetland restoration site. At present, the best agricultural use of this property appears to be a combination of livestock grazing and a continuation of the native plant nursery operation which provides a reliable supply of native plants used locally and afar for revegetation and for environmental enhancement projects.

Having previously acquired the adjacent property from Freshwater Farms and managed public access and habitat restoration successfully on the property, NRLT is ideally suited to expand upon its earlier success at this proposed acquisition site.

**Site Description:** The property is located at Freshwater Corners, west of Myrtle Avenue, north of Eureka, Humboldt County. It is located in the lower and tidally influenced reach of Freshwater Creek near Humboldt Bay. The creek, which drains a 20,000-acre watershed, forms

the north side of the parcel. Like the formerly acquired Freshwater Farms property, this parcel is primarily a level pasture adjacent to Freshwater Slough, and lying near the confluence of Freshwater Slough and Humboldt Bay. Unlike the previously acquired property, this 20-acre property hosts several structures including a barn and several outbuildings in poor condition. Moreover, the tidal slough restoration and public access improvements made to the formerly acquired property have not been made to this parcel.

**Project History:** The Coastal Conservancy assisted the NRLT with the acquisition of 54 acres of Freshwater Farms in 2005. Since the acquisition of that property, NRLT has optimized management of the property by developing a 35-acre tidal marsh restoration project, improving agricultural infrastructure on the site, and improving public access to the property with docent-led tours made possible through a previously negotiated access agreement with the former owner of the proposed Phase II acquisition that allowed entrance to his property under NRLT supervision. Unfortunately that landowner lost the property in bankruptcy proceedings and title transferred to the current owner. If NRLT is unsuccessful in its effort to acquire the Phase II property, the current landowner intends to sell the property on the open market, with no certainty that the cooperative access agreement will remain under new ownership.

The habitat restoration project on the Phase I property, developed by the NRLT, the California Department of Fish and Game (“DFG”), and the Conservancy now provides approximately 35 acres of restored estuarine and wetland habitat for juvenile salmonids and other wetland-dependent species. This enhancement project included breaching of levees and partial flooding of the property for the purpose of improving water quality and habitat value in Humboldt Bay tributaries by reclaiming historic tidal wetland formerly isolated from the main channel by historic diking, ditching, and draining. As documented by DFG field biologists, the project significantly enhanced salmonid population levels in the estuarine and riparian habitat of lower Freshwater Creek, a tidally influenced portion of an historically important anadromous fish stream. This success is largely due to the fact that the project provided estuarine backwater channel habitat in a watershed where the virtual absence of such habitat is understood to be a primary limiting factor for resident coho and Chinook salmon and steelhead and cutthroat trout populations. By funding the acquisition of the former site, the Conservancy enabled the restoration to proceed. By funding the Phase II acquisition, the Conservancy will enable the NRLT to expand its efforts in this regard. Since the Phase I acquisition in 2005, NRLT staff has expressed its long-term desire to proceed with the Phase II acquisition should the opportunity arise. As soon as the property appeared headed towards bankruptcy proceedings, NRLT notified Conservancy staff of its intention to pursue a purchase and sale agreement with any future owner. Once acquiring the property appeared possible, NRLT, in recognition of the Conservancy’s key support for Phase I, submitted a grant application to the Conservancy for possible assistance with the acquisition.

More recently, the Conservancy authorized \$50,000 to the NRLT to develop a trail network at the Phase I acquisition. Funds were authorized in October 2010 (Exhibit 2), and design and permitting for that effort is well underway. Proposed improvements include a trail, a boat launch to the slough, a picnic area, and other amenities surrounding the 35-acre restoration project implemented recently on the property.

## PROJECT FINANCING

<b>Coastal Conservancy</b>	223,600.00
Department of Fish and Game (Adaptive Program)	10,000.00
Humboldt Area Foundation (Donor Advised Funds)	3,000.00
Trout Unlimited	3,000.00
Northcoast Audubon Society	4,000.00
 <b>Total Project Costs</b>	 243,600.00

A portion of the Conservancy funding is expect to come from the fiscal year 2009/2010 appropriation to the Conservancy from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). The project is appropriate for funding under this source as these funds are available for the acquisition, enhancement, restoration, protection and development of coastal resource in accordance with the Conservancy's enabling legislation. Projects that restore natural resources are given priority if they meet one or more of the criteria specified in Pub. Resources Code § 75071. The proposed restoration project satisfies the following specified criteria: (a) Landscape/Habitat Linkages, the project will help sustain a complex riparian system which supports several threatened and endangered species as detailed in the project description, above, (b) Watershed Protection – the project will contribute to long-term protection of and improvement to the water and biological quality of Humboldt Bay; and (e) Non-State Matching Funds –as discussed above, NRLT has secured some local contributions to the project. As also required by Section 75701, Conservancy staff has submitted to the Resources Agency and has posted on the Conservancy's website an explanation as to how the proposed acquisition meets the criteria of that section.

A portion of the Conservancy funding is also expected to come from two subaccounts under the Conservancy's Coastal Trust Fund: the "Eelgrass Mitigation Funds - CC Permit E-06-003" subaccount and the "Humboldt Bay Watershed Enhancement" subaccount. The funds in each of these subaccounts originated from payments made by Coast Seafoods Company, as a special condition to their Coastal Development Permit E-06-003. The payments were required to mitigate adverse impacts of development under that permit to eelgrass habitat in Humboldt Bay and the corresponding reduction in available Coho salmon rearing habitat. Consistent with the Commission permit and under agreement with the Commission, the Conservancy may use funds in both of these accounts for the purpose of habitat enhancement for federal- and state-listed anadromous fish species. The Humboldt Bay Watershed Enhancement" subaccount must be used for these purposes within the Humboldt Bay Watershed. Since the project will involve the acquisition and enhancement of habitat for Coho salmon and other Humboldt Bay species in an important Humboldt Bay tributary, the use of these is consistent with the original intent of the mitigation payment.

## CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project is undertaken pursuant to Chapter 6 of Division 21 of the Public Resources Code Sections 31251-31270, as follows:

Pursuant to Section 31251, the Conservancy may award grants to any public agency or nonprofit organization to acquire land that has suffered loss of natural and scenic values. The NRLT

completed a successful habitat restoration project on its adjacent parcel, and hopes to extend that effort to the parcel proposed for acquisition, which likewise once was historic tidal wetland that has been impacted by diking, ditching, and draining. The anticipated broader restoration effort would be achieved by assembling these two parcels as is encouraged under this section and Chapter 6.

Pursuant to Section 31252, all areas proposed for resource enhancement should be identified in a certified local coastal plan or program as requiring public action to resolve existing or potential resource problems. Freshwater Slough is identified in the Humboldt Bay Area Plan of the Humboldt County Local Coastal Program (“LCP”) as a coastal stream and is therefore subject to the protections afforded by Section 30231 of the Coastal Act which establishes that “the biological productivity and the quality of coastal waters...shall be maintained...” (LCP 3-56). Moreover, the County requests in the LCP that the DFG investigate degraded wetlands, such as those at Freshwater Farms, and explore feasible alternatives to improve the wetlands so as to provide “...equal or greater biological productivity and at least equal acreage to the existing wetland.” (LCP 3-52). Consistent with this section, NRLT has completed a wetland restoration project on the previously acquired Freshwater Farms property, and may have the opportunity to extend that effort to the parcel proposed for acquisition, if successfully acquired.

Finally, pursuant to Section 31253, “(the) Conservancy may provide up to the total of the cost of any coastal resource enhancement project...” and the amount of the Conservancy contribution shall be determined only after an assessment of funding generally available and other factors. The proposed contribution by the Conservancy was determined based on application of selection criteria, as discussed below, and after taking into account other available resources and the matching contributions to the project by other funding sources. NRLT, DFG, and others shall provide matching funds for the proposed project as described in “Project Financing,” above.

#### **CONSISTENCY WITH CONSERVANCY’S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 7 Objective A**, the proposed project will enable the grantee to acquire fee interest in 20 additional acres of agricultural and habitat land adjoining Freshwater Slough and an already acquired parcel, thereby ensuring the assembly of key coastal parcels and providing permanent protection of scenic and habitat values associated with coastal farmland.

#### **CONSISTENCY WITH CONSERVANCY’S PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy’s Project Selection Criteria and Guidelines, last updated on November 10, 2011, in the following respects:

##### **Required Criteria**

1. **Promotion of the Conservancy’s statutory programs and purposes:** See the “Consistency with Conservancy’s Enabling Legislation” section above.

2. **Consistency with purposes of the funding source:** See the “Project Financing” section above.
3. **Support of the public:** The project is supported by Congressman Mike Thompson, State Senator Noreen Evans, Assemblymember Wes Chesbro, the DFG, the Audubon Society, and others.(Exhibit 2)
4. **Location:** The property is located entirely within the coastal zone of Humboldt County.
5. **Need:** Having acquired the property through a bankruptcy proceeding, the seller is focused on selling the property as soon as possible, potentially to a buyer whose interests in public access and enhancement may not be consistent with NRLT’s goals for the area. Thus, the Conservancy’s timely support of the acquisition is critical to NRLT’s ability to achieve its goals of maximizing access and enhancement opportunities in this area.
6. **Greater-than-local interest:** NRLT plays a vital role in Humboldt County of balancing agricultural preservation in the coastal zone, public access to natural habitat areas, and ecological enhancement of ecologically sensitive habitat areas, such as the tidal sloughs and wetlands found at Freshwater Farms. Freshwater Farms is NRLT’s flagship site for public access enhancement, it is centrally located near Eureka, and it offers a premier opportunity for residents and visitors alike to learn about NRLT’s efforts and to see a successful balancing of often competing interests.
7. **Sea level rise vulnerability:** The Reserve lies within a flood-prone area, and is subject to periodic flooding from Freshwater Creek, which runs along its northern border. The natural resources and agricultural uses of the Reserve will remain relatively unimpacted by sea level rise, aside from a possible expansion of the wetland element on the property and a subsequent reduction of the viable agricultural portion. Additional salt water intrusion resulting from higher tidal elevations may reduce the available fresh water habitat on the property.

#### **Additional Criteria**

8. **Urgency:** The prior manager of Freshwater Farms Nursery, the subject property, who had cooperated with NRLT on the restoration and public access activities on the Phase 1 acquisition, has experienced various financial challenges, and has lost title to the property. The new owner, a land developer, is sympathetic to the NRLT’s mission, but intends to sell the property as soon as possible to the highest bidder, and that owner may not provide NRLT with the same level of cooperation on parking and access that it has enjoyed thus far. Loss of the parking available through cooperative agreement at the Nursery would impinge upon public access opportunities. Loss of the ability to expand public access trails, restoration efforts, and agricultural operations would be unfortunate, given the progress that has already been made on the Phase I property.
9. **Resolution of more than one issue:** Coastal acquisitions in Humboldt County frequently evoke a conflict between agricultural interests, ecological restorationists, and public access enthusiasts. NRLT’s successful management of its existing property at Freshwater Farms has demonstrated that these interests can be compatible and balanced successfully. Thus NRLT increases public access opportunities and coastal resource habitats, while improving management and productivity at formerly marginal pastures.

10. **Leverage:** See the “Project Financing” section above.
11. **Conflict resolution:** The proposed acquisition will strike a balance between enhancement and continued agricultural use, issues that have been contentious in Humboldt County, and will help educate visitors about the importance of that balance.
12. **Innovation:** NRLT has demonstrated the capacity to balance agricultural use, public access, and wildlife habitat restoration. Despite balancing these uses on a relatively small parcel size, NRLT has helped these uses to coexist peacefully, demonstrating that conflicts between these uses tend to be more a matter of perception than reality.
13. **Readiness:** NRLT has concluded negotiations with the owner, has prepared the title company for possible action, and is ready to complete the acquisition timely.
14. **Realization of prior Conservancy goals:** See “Project History” above.
15. **Return to Conservancy:** See the “Project Financing” section above.
16. **Cooperation:** NRLT has established many partnerships locally to achieve its public access, restoration and agricultural goals at Freshwater Farms. Partners include the Redwood Community Action Agency, Humboldt State University, and a host of state and federal agencies.
17. **Vulnerability from climate change impacts other than sea level rise:** The project site lies within a designated freshwater emergent wetland, and is surrounded by tidally-influenced slough channels. Significant impacts on the property due to climate change are unforeseen, and the uses intended through this project (public access, grazing, and possible additional wetland restoration) are not expected to be highly vulnerable to such impacts, should they occur.

#### **CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:**

The proposed project will result in the acquisition of 20-acres suitable to provide enhancement of natural resources, agricultural protection, and public access within the coastal zone generally, and within the jurisdiction of Humboldt County's Humboldt Bay Area Local Coastal Plan (LCP) (last amended 6/7/94).

The LCP recognizes the agricultural value of the Freshwater Farms area, and for this reason the property is designated Agricultural Exclusive (Humboldt County General Plan and Zoning Map, as depicted in the GIS Zoning shapefile online). The LCP states that recreational uses are compatible with agricultural lands. See LCP at page 3-34. Public access to and demonstration of functional agriculture in the coastal zone as proposed by the NRLT is therefore consistent with the LCP.

The LCP also recognizes the ecological importance of anadromous fish streams, and considers them environmentally sensitive habitat areas (LCP Chapter 3.30 B (1)(a)(3)). The LCP identifies Freshwater Slough as a designated coastal stream subject to all appropriate levels of protection called for in the Coastal Act (LCP at page 42). Therefore, education and outreach to the public concerning the acquisition of the property, establishment of property restrictions designed to protect the riparian zone, and projections for an expanded estuarine wetland restoration of degraded wetlands are all consistent with the LCP.

**COMPLIANCE WITH CEQA:**

Acquisition of title to the subject property is categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”) under 14 California Code of Regulations Section 15325 because it involves the transfer of an interest in land to preserve existing open space and plant and animal habitat; to allow continued agricultural use; and to allow restoration of natural conditions.

Staff will file a Notice of Exemption upon approval.